

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MICHAEL HOWARD HUNTER,

Plaintiff,

vs.

GREGORY JOHNSON, LARRY
STEINMETZ, WILLIAM GRANT,
HAL WILSON, and RYAN GOLDEN,

Defendants.

NO. CV-09-165-JPH

ORDER ADOPTING REPORTS AND
RECOMMENDATIONS, REVOKING ORDER
GRANTING APPLICATION TO PROCEED IN
FORMA PAUPERIS AND DENYING PENDING
MOTION

Magistrate Judge Hutton filed a Report and Recommendation on July 27, 2009 (Ct. Rec. [31](#)), recommending revocation of the Order granting Plaintiff's application to proceed in forma pauperis (Ct. Rec. [23](#)) as Mr. Hunter's prior litigation history precludes him from proceeding in forma pauperis under 28 U.S.C. § 1915(g). The Magistrate Judge also recommended denying Plaintiff's "Belated Motion for Immediate Hearing, for the Production of the Plaintiff and for Other Relief" (Ct. Rec. 41).

Mr. Hunter has filed an Objection (Ct. Rec. 47) and apparently also seeks to disqualify the Magistrate Judge and any District Court Judge who upholds allegedly "malicious actions" of the Magistrate Judge (Ct. Rec. 48). Plaintiff contends 28 U.S.C. § 1915(g) is being unconstitutionally applied to him.

1 Plaintiff asserts he never filed a frivolous or malicious suit and
2 the suits were never reviewed by the Ninth Circuit. Regardless whether
3 Plaintiff sought appellate review, his contention of no prior frivolous
4 or malicious filings is negated by 90-CV-00616-JCC (Western District of
5 Washington, Ct. Rec. 7, Bar Order acknowledging "the large number of
6 frivolous and/or malicious filings"); 92-CV-00079-PB (North Dakota, Ct.
7 Rec. 2, dismissed as frivolous and malicious); and 94-CV-00016-RSW
8 (North Dakota Ct. Rec. 8, dismissed as frivolous).

9 Plaintiff states he is indigent, unable to work due to a disability
10 and will probably never be able to save enough money to pay for a filing
11 fee. He asserts he has been "shut out" of the federal courts because he
12 filed cases resulting from an alleged denial of access to a law library
13 or someone trained in the law. He contends Congress has "no right" to
14 foreclose his access to the court to redress grievances.

15 Plaintiff's arguments are precluded by *Rodriguez v. Cook*, 169 F.3d
16 1176, 1178-81 (9th Cir. 1999). There is no constitutional right to
17 proceed in forma pauperis. *Id.* at 1180 ("[W]e note that IFP status is
18 not a constitutional right."). Plaintiff presents no facts in his
19 complaint from which the court could infer he is under imminent danger
20 of serious physical injury. Therefore, he may not proceed in forma
21 pauperis in this action. 28 U.S.C. § 1915(g).

22 Accordingly, **IT IS ORDERED** the Reports and Recommendations (**Ct.**
23 **Recs. 31 & 46**) are **ADOPTED in their entirety**. The Order granting
24 Application to Proceed in forma pauperis (**Ct. Rec. 23**) is **REVOKED**. The
25 court will notify the institution having custody of Mr. Hunter of this
26 revocation by separate Order.

IT IS FURTHER ORDERED Plaintiff's "Belated Motion for Immediate Hearing, for Production of the Plaintiff and for Other Relief" (**Ct. Rec. 41**) is **DENIED as moot**. To the extent Plaintiff is seeking to disqualify Magistrate Judge Hutton for bias or prejudice under 28 U.S.C. § 144, he failed to file an affidavit setting forth specific facts and reasons for the belief that bias exists. *Davis v. Fendler*, 650 F.2d 1154, 1163 (9th Cir. 1981). Random accusations regarding political appointments are insufficient to demonstrate bias or prejudice. Therefore, **IT IS ORDERED** Plaintiff's request to recuse Magistrate Judge Hutton is **DENIED**.

IT IS SO ORDERED. The District Court Executive is directed to enter this Order and forward a copy to Plaintiff. Plaintiff may submit the \$350.00 filing fee within **TWENTY (20) DAYS** of the date of this Order. Failure to do so will be construed as his consent to dismissal of this action. The District Court Executive shall SET A CASE MANAGEMENT DEADLINE ACCORDINGLY.

DATED this 5th day of November 2009.

S/ Edward F. Shea
EDWARD F. SHEA
UNITED STATES DISTRICT JUDGE